IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5718 of 2007()

CRIME NO.593/2007 OF KASARAGOD POLICE STATION

: PETITIONERS/ACCUSED:

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1. HAKKIM, S/O. ABBAS ERIYAL,
   MANJANKAL, MOODAMBAYAL, P.O. THEKKIL FERRY,
   KASARAGOD.

2. SALAM MANJANKAL, S/O. ABDULRAHIMAN,
   P.O. PERUMBALA, (VIA) KALANADU.

3. MAHIN KOPPA, S/O. ABBAS,
   BENTHAD, P.O. THEKKIL FERRY, KASARAGOD.

4. ABBAS KATTAKKAL,
   S/O. ABDULLAKUNJI MANJANKAL, P.O. PERUMBALA,
   (VIA) KALANAD.

5. ISMAYIL, S/O. ABOOBAKCER,
   MANJANKAL, MOODAMBAYAL, P.O. THEKKIL FERRY,
   KASARAGOD.

6. ASHRAF, S/O. ABOOBACKER,
   MANJANKAL, MOODAMBAYAL, P.O. THEKKIL FERRY,
   KASARAGOD.

7. ASSLAM MADATHIL,
   S/O. MOHAMMEDKUNJI PATHUR, P.O. THEKKIL FERRY,
   KASARAGOD.

8. BUHARI, S/O. A.U. SHAFI,
   CHEMMANAD P.O., KASARAGOD.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5718 of 2007

Dated this the 24th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations, inter alia, under Sections 452 and 324 r/w 149 I.P.C. The crux of the allegations in the crime registered is that the petitioners along with 10 other identifiable persons had unleashed an attack on the defacto complainant after making the necessary prior preparations. They allegedly trespassed into the house and indulged in wanton acts of mischief and violence. Even though it is alleged that the defacto complainant was beaten, he did not suffer any injuries. He had therefore not gone to the Doctor. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally unfounded. The incident did not take place in the manner alleged by the defacto complainant at all. The defacto complainant has influence with the police. The alleged incident took place on 5.9.07 and the crime is seen registered on 6.9.07. The defacto complainant had made use of the influence which he wielded with the police to make such false allegations.

3. The learned Public Prosecutor opposes the application. There are no circumstances which justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The learned Public Prosecutor submits that telltale indications are available in the scene mahazar to indicate the nature of the gruesome attack made by the miscreants who trespassed into the house of the defacto complainant. I have been taken through the description of the damage caused to the house, available in the scene mahazar. It has been pointed out to me that all the 8 petitioners are named in the F.I.R.

4. The learned Public Prosecutor submits that in any view of the matter, there is no justification in the prayer for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor .

5. Having considered all the relevant inputs - particularly the nature of the damage on the house revealed from the descriptions in the scene mahazar, I find merit in the opposition by the learned Public Prosecutor . I am not persuaded to agree that there are any features in this case which would justify the invocation of the extraordinary

equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal course.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-